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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,953	03/25/2004	Russell Berger	S14P864US1	6353
3017	7590	08/28/2006	EXAMINER	
BARLOW, JOSEPHS & HOLMES, LTD.			SHAFER, RICKY D	
101 DYER STREET			ART UNIT	PAPER NUMBER
5TH FLOOR				
PROVIDENCE, RI 02903			2872	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/808,953	BERGER, RUSSELL
	Examiner Ricky D. Shafer	Art Unit 2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07/06/2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-13 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3 and 8-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/06/2006 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumbra et al ('347) in view of Lepoivre et al ('670) or Samuels, Sr. et al ('165).

Lumbra et al discloses a mirror assembly for viewing a child (10) sitting in a rear-facing child seat (12) positioned on a vehicle seat (14) having a seat back (16) having a front surface and an unitary head rest comprising a base plate (20) having a left edge (42) and a right edge (44) and a rear surface (54, 56), wherein the rear surface of the base plate is capable of communicating with the front surface of the seat back and head rest, a mirror element (22) attached to said base plate, a left fastening strap (38) having an inner end and an outer free end having connector means (51) which comprises one of fastening hooks and loops, the inner end of the left fastening strap being connected to the left edge of the base plate, a right fastening strap (40) having an inner end and an outer free end having connector means (51) which comprises one of fastening hooks and loops, the inner end of the right fastening strap being connected to the

right edge of the base plate and wherein the left and right fastening straps are capable of being routable and securing the base plate in communication with the front surface of the seat back and head rest, note figures 1-4 along with the associated description thereof, except for the mirror assembly having a mirror housing adjustably connected to the base with an asymmetrically positioned pivoting ball and socket joint.

Lepoivre et al ('670) and Samuels, Sr. et al ('165) each teaches it is well known to use an asymmetrically positioned pivoting ball and socket joint [(12), (13)] in the same field of endeavor for the purpose of adjustably connecting a mirror housing [(11), (4)] to a base [(14,17), (12)] in order to increase a driver's field of view. Note figures 1-3 of Lepoivre et al and figures 2 to 2B of Samuels, Sr. et al, respectively.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the mirror (22) of Lumbra et al to include an adjustable mirror housing and adjustably connect the mirror housing to the base plate with an asymmetrically positioned pivoting ball and socket joint, as taught by Lepoivre et al or Samuels, Sr. et al, in order to increase the driver's field of view, since it has been held that the provisions of adjustability, where needed, involves only routine skill in the art. Note: In re Stevens, 101 USPQ 284 (CCPA 1954).

As to the limitations of the head rest being interconnected to the seat back by at least one support bar with a gap therebetween, such feature is well known and commonly used and employed by various vehicle manufacturers in order to accommodate individuals of different heights. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the head rest of Lumbra et al to be separable from the back seat in

order to accommodate drivers of different heights, since it has been held that constructing a formerly integral structure of various elements involves only routine skill in the art. Note: Nerwin V. Erlichman, 168 USPQ 177, 179.

As to the limitations of claim 9, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the base of Lumbra et al to include a foam pad, as is well known in numerous analogous arts, in order to protect the head rest from possible damage and/or marring.

4. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumbra et al ('347) in view of Lepoivre et al ('670) or Samuels, Sr. et al ('165) as applied to claims 1, 3, 9 and 13 above, and further in view of Monahan et al ('708).

Lumbra et al in view of Lepoivre et al or Samuels, Sr. et al discloses all of the subject matter claimed, note the above explanation, except for the connector means comprises a slotted bucket or male and female connectors.

Monahan et al teaches it is well known to use male and female connectors having a slotted buckle in the same field of endeavor for the purpose of adjustably fastening one end of a strap to another end of a strap so as to attach a mirror to an object (see Fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the outer ends of the left and right fastening straps of Lumbra et al in view of Lepoivre et al or Samuels, Sr. et al to include male and female connectors having a slotted buckle, as taught by Monahan et al, in order to obtain a secured adjustable fastening assembly which can be easily removed and tightened.

As to the limitations of claim 10, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the base plate of Lumbra et al in view of Lepoivre et al or Samuels, Sr. et al to include slots for receiving each of the straps routed therethrough, as is well known in the art, in order to provide for a snug adjustable fastening mechanism.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lumbra et al ('347) in view of Lepoivre et al ('670) or Samuels, Sr. et al ('165) as applied to claims 1, 3, 9 and 13 above, and further in view of Nielsen et al ('384).

Lumbra et al in view of Lepoivre et al or Samuels, Sr. et al discloses all of the subject matter claimed, note the above explanation, except for the mirror housing and mirror having a circular shape.

Nielsen et al teaches it is well known that mirror housings and mirrors may include a variety of different geometric shapes, such as a circular shape (see column 4, lines 52-65) in the same field of endeavor for the purpose of viewing a child sitting in a rear facing child seat positioned on a vehicle seat (see Fig. 6).

It would have been obvious to modify the shape of the mirror housing and mirror of Lumbra et al in view of Lepoivre et al or Samuels, Sr. et al to include any one of the numerous geometric shapes specified by Nielson et al in column 4, lines 52-59, such as circular, in order to obtain an aesthetic (ornamental) appealing mirror assembly, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of one of ordinary skill in the art. Note: In re Dailey et al, 149 USPQ 47 and In re Seid, 73 USPQ 431.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky D. Shafer whose telephone number is (571) 272-2320. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDS

August 21, 2006

*Ricky D. Shafer*  
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PATENT EXAMINER  
ART UNIT 2872